

Message

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Subject: FYI ONLY: Pipeline Co. claims releases exempt from Ohio enviro laws

Non-Responsive

PIPELINES

Ohio takes legal action over Rover construction violations

Jenny Mandel, E&E News reporter

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The state of Ohio is initiating legal action against Energy Transfer Partners LP, the company behind the \$4.2 billion Rover pipeline, in response to a series of construction mishaps leading to nearly \$1 million in fines that regulators say the company is doing little to address.

On Friday, Craig Butler, the director of Ohio's EPA, called on the state's attorney general to begin civil proceedings against ETP for violation of environmental laws addressing air and water quality. ETP is building the 713-mile pipeline system that crosses through four states on its path from natural-gas-producing parts of the Marcellus Shale to delivery points in Michigan and Canada.

Last week Ohio EPA issued a formal order for ETP and its project subsidiary, Rover Pipeline LLC, to take steps to remediate "inadvertent returns" of drilling mud that leaked into sensitive wetlands and other habitats. ETP also must address violations of stormwater runoff and rules related to the open burning of cleared material, and carry out water quality monitoring related to diesel contamination of drilling waste material, among other actions.

The state has registered more than 30 environmental complaints since work started on the pipeline in March, including a leak of at least 2 million gallons — the state says it could be as much as 5 million gallons — of drilling mud in April that was found to contain unauthorized diesel, triggering special disposal requirements ([Energywire](#), June 9).

"We had been trying unsuccessfully to negotiate with Rover, and this administrative order to resolve all of these violations and to get them to submit revised contingency plans going forward" is part of that, Butler said in a call with reporters yesterday. The company needs "to come back into complete compliance with the laws in the state of Ohio," he said.

But Butler said that after weeks of talks between ETP officials and the state, he has little expectation that the company will voluntarily agree to implement the agency's order. "My hope would be that they'll just comply with the order, but I suspect that that's not going to happen," he said.

Butler said ETP has maintained that the state has no jurisdiction to impose penalties on the company because its authority is pre-empted by the Federal Energy Regulatory Commission, which reviews and approves interstate natural gas pipelines. "Their constant position is, the state of Ohio has absolutely no authority here," he said.

"FERC has been clear to us to say, 'You can cite and hold Energy Transfer Partners responsible for environmental sins that they've caused in Ohio,'" Butler added, noting that the state EPA has delegated authority under the Clean Air Act and Safe Drinking Water Act. He said the state will vigorously pursue its case against the company in the state court system and, if necessary, at the federal level.

ETP did not respond to questions on the matter.

In May, FERC suspended the use of new incidences of horizontal directional drilling, a technique used to tunnel under waterways, although conventional land-based trenching has been allowed to continue. That suspension was to be in effect until an independent contractor completed a review of why the project has seen so many problems with the tunneling technique. In June, FERC initiated an investigation through its Office of Enforcement into the presence of diesel in some of the leaked drilling mud, an apparent violation of ETP's permit.

The construction delays make it unlikely that ETP will meet a planned milestone to have a portion of the pipeline operational this month. Construction is moving forward aggressively though, and earlier this month, FERC gave the company permission to convert some planned directional drilling work to trenching, expanding what it can do while it awaits full permission to proceed.

Butler described the company's attitude toward state officials as highly unusual.

"It does, frankly, take your breath away a little bit" that ETP so completely dismisses the state's authority over compliance with environmental laws, he said. "It is very infrequent that you get a company that reacts the way Energy Transfer Partners has to us, which is, 'We don't care what problems we've caused, we're just marching across the state of Ohio,'" he said.

As of last month, Ohio had proposed \$914,000 in penalties against the company for environmental violations, and that figure is expected to increase with two additional drilling mud leaks that have taken place since. Butler said that with the referral to the state attorney general, the penalties will be subject to negotiation between ETP and the state agency.

Other companies proposing pipeline work in the state could pay a price for Rover's problems. Butler said the state EPA has reached out to companies with upcoming pipeline projects, seeking to head off compliance issues by revising their contingency plans.

James Lee, a spokesman, said the agency "is emphasizing the need for an advance plan to deal with inadvertent returns" with equipment and personnel staged near where drilling is to take place. "Pipeline companies should be vigilant in monitoring for inadvertent returns in order to prevent a situation in which workers are unaware that material is being released into a nearby stream or wetland," he added.

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